

CHILD NEGLECT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Brad M. Daw

LONG TITLE

General Description:

This bill amends the definition of "neglect" and makes related restrictions.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "neglect"; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-403, as last amended by Laws of Utah 2008, Chapter 299

62A-4a-409, as last amended by Laws of Utah 2017, Chapter 459

78A-6-105, as last amended by Laws of Utah 2017, Chapters 181, 330, and 401

78A-6-302, as last amended by Laws of Utah 2017, Chapter 330

78A-6-306, as last amended by Laws of Utah 2017, Chapter 330

78A-6-312, as last amended by Laws of Utah 2017, Chapters 323 and 330

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section ~~62A-4a-403~~ is amended to read:

29 **62A-4a-403. Reporting requirements.**

30 (1) (a) Except as provided in Subsection (2), when any ~~[person]~~ individual, including
31 ~~[persons]~~ an individual licensed under ~~[Title 58, Chapter 67, Utah Medical Practice Act, or]~~
32 Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67, Utah Medical Practice Act,
33 has reason to believe that a child has been subjected to abuse or neglect, or ~~[who]~~ observes a
34 child being subjected to conditions or circumstances ~~[which]~~ that would reasonably result in
35 abuse or neglect, that ~~[person]~~ individual shall immediately ~~[notify]~~ report the alleged abuse or
36 neglect to the nearest peace officer, law enforcement agency, or office of the division.

37 (b) Upon receipt of ~~[the notification]~~ a report described in Subsection (1)(a), the peace
38 officer or law enforcement agency shall immediately notify the nearest office of the division. If
39 an initial report of abuse or neglect is made to the division, the division shall immediately
40 notify the appropriate local law enforcement agency.

41 (c) The division shall, in addition to its own investigation, comply with and lend
42 support to investigations by law enforcement undertaken ~~[pursuant to]~~ to investigate a report
43 ~~[made under this section]~~ described in Subsection (1)(a).

44 ~~[(2) Subject to Subsection (3), the notification requirements of Subsection (1) do not~~
45 ~~apply to a clergyman or priest, without the consent of the person making the confession, with~~
46 ~~regard to any confession made to the clergyman or priest in the professional character of the~~
47 ~~clergyman or priest in the course of discipline enjoined by the church to which the clergyman~~
48 ~~or priest belongs, if:]~~

49 ~~[(a) the confession was made directly to the clergyman or priest by the perpetrator;~~
50 ~~and]~~

51 (2) Subject to Subsection (3), the notification requirement described in Subsection
52 (1)(a) does not apply to a member of the clergy, with regard to any confession made to the
53 member of the clergy while functioning in the ministerial capacity of the member of the clergy
54 and without the consent of the individual making the confession, if:

55 (a) the perpetrator made the confession directly to the member of the clergy; and

56 (b) the ~~[clergyman or priest]~~ member of the clergy is, under canon law or church
57 doctrine or practice, bound to maintain the confidentiality of that confession.

58 (3) (a) When a ~~[clergyman or priest]~~ member of the clergy receives information about

59 abuse or neglect from any source other than confession of the perpetrator, the [~~clergyman or~~
60 ~~priest~~] member of the clergy is required to [~~give notification on the basis of~~] report that
61 information even though the [~~clergyman or priest~~] member of the clergy may have also
62 received [~~a report of~~] information about abuse or neglect from the confession of the perpetrator.

63 (b) Exemption of [~~notification requirements~~] the reporting requirement for a
64 [~~clergyman or priest~~] member of the clergy does not exempt [~~a clergyman or priest~~] the
65 member of the clergy from any other efforts required by law to prevent further abuse or neglect
66 by the perpetrator.

67 Section 2. Section **62A-4a-409** is amended to read:

68 **62A-4a-409. Investigation by division -- Temporary protective custody --**
69 **Preremoval interviews of children.**

70 (1) (a) The division shall make a thorough preremoval investigation upon receiving
71 either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
72 dependency, when there is reasonable cause to suspect that a situation of abuse, neglect, fetal
73 alcohol syndrome, or fetal drug dependency exists.

74 (b) The primary purpose of the investigation described in Subsection (1)(a) shall be
75 protection of the child.

76 (2) The preremoval investigation described in Subsection (1)(a) shall include the same
77 investigative requirements described in Section [62A-4a-202.3](#).

78 (3) The division shall make a written report of its investigation that shall include a
79 determination regarding whether the alleged abuse or neglect is supported, unsupported, or
80 without merit.

81 (4) (a) The division shall use an interdisciplinary approach when appropriate in dealing
82 with reports made under this part.

83 (b) The division shall convene a child protection team to assist the division in the
84 division's protective, diagnostic, assessment, treatment, and coordination services.

85 (c) The division may include members of a child protection unit in the division's
86 protective, diagnostic, assessment, treatment, and coordination services.

87 (d) A representative of the division shall serve as the team's coordinator and chair.
88 Members of the team shall serve at the coordinator's invitation. Whenever possible, the team
89 shall include representatives of:

- 90 (i) health, mental health, education, and law enforcement agencies;
- 91 (ii) the child;
- 92 (iii) parent and family support groups unless the parent is alleged to be the perpetrator;

93 and

- 94 (iv) other appropriate agencies or individuals.

95 (5) If a report of neglect is based upon or includes an allegation of educational neglect,
96 the division shall immediately consult with school authorities to verify the child's status in
97 accordance with Sections [53A-11-101](#) through [53A-11-103](#).

98 (6) When the division completes its initial investigation under this part, it shall give
99 notice of that completion to the person who made the initial report.

100 (7) Division workers or other child protection team members have authority to enter
101 upon public or private premises, using appropriate legal processes, to investigate reports of
102 alleged abuse or neglect, upon notice to parents of their rights under the Child Abuse
103 Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

104 (8) With regard to any interview of a child prior to removal of that child from the
105 child's home:

106 (a) except as provided in Subsection (8)(b) or (c), the division shall inform a parent of
107 the child prior to the interview of:

- 108 (i) the specific allegations concerning the child; and
- 109 (ii) the time and place of the interview;

110 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the
111 alleged perpetrator, the division is not required to comply with Subsection (8)(a);

112 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
113 is unknown, the division may conduct a minimal interview or conversation, not to exceed 15
114 minutes, with the child prior to complying with Subsection (8)(a);

115 (d) in all cases described in Subsection (8)(b) or (c), a parent of the child shall be
116 notified as soon as practicable after the child has been interviewed, but in no case later than 24
117 hours after the interview has taken place;

118 (e) a child's parents shall be notified of the time and place of all subsequent interviews
119 with the child; and

120 (f) the child shall be allowed to have a support person of the child's choice present,

121 who:

122 (i) may include:

123 (A) a school teacher;

124 (B) an administrator;

125 (C) a guidance counselor;

126 (D) a child care provider;

127 (E) a family member;

128 (F) a family advocate; or

129 (G) a member of the clergy; and

130 (ii) may not be ~~[a person]~~ an individual who is alleged to be, or potentially may be, the
131 perpetrator.

132 (9) In accordance with the procedures and requirements of Sections [62A-4a-202.1](#)
133 through [62A-4a-202.3](#), a division worker or child protection team member may take a child
134 into protective custody and deliver the child to a law enforcement officer, or place the child in
135 an emergency shelter facility approved by the juvenile court, at the earliest opportunity
136 subsequent to the child's removal from the child's original environment. Control and
137 jurisdiction over the child is determined by the provisions of Title 78A, Chapter 6, Juvenile
138 Court Act, and as otherwise provided by law.

139 (10) With regard to cases in which law enforcement has or is conducting an
140 investigation of alleged abuse or neglect of a child:

141 (a) the division shall coordinate with law enforcement to ensure that there is an
142 adequate safety plan to protect the child from further abuse or neglect; and

143 (b) the division is not required to duplicate an aspect of the investigation that, in the
144 division's determination, has been satisfactorily completed by law enforcement.

145 (11) With regard to a mutual case in which a child protection unit was involved in the
146 investigation of alleged abuse or neglect of a child, the division shall consult with the child
147 protection unit before closing the case.

148 Section 3. Section **78A-6-105** is amended to read:

149 **78A-6-105. Definitions.**

150 As used in this chapter:

151 (1) (a) "Abuse" means:

- 152 (i) (A) nonaccidental harm of a child;
- 153 (B) threatened harm of a child;
- 154 (C) sexual exploitation;
- 155 (D) sexual abuse; or
- 156 (E) human trafficking of a child in violation of Section 76-5-308.5; or
- 157 (ii) that a child's natural parent:
 - 158 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
 - 159 child;
 - 160 (B) is identified by a law enforcement agency as the primary suspect in an investigation
 - 161 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - 162 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
 - 163 recklessly causing the death of another parent of the child.
- 164 (b) "Abuse" does not include:
 - 165 (i) reasonable discipline or management of a child, including withholding privileges;
 - 166 (ii) conduct described in Section 76-2-401; or
 - 167 (iii) the use of reasonable and necessary physical restraint or force on a child:
 - 168 (A) in self-defense;
 - 169 (B) in defense of others;
 - 170 (C) to protect the child; or
 - 171 (D) to remove a weapon in the possession of a child for any of the reasons described in
 - 172 Subsections (1)(b)(iii)(A) through (C).
- 173 (2) "Abused child" means a child who has been subjected to abuse.
- 174 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
- 175 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
- 176 Section 78A-6-1302 is not an adjudication.
- 177 (4) "Adult" means [~~a person~~] an individual 18 years of age or over, except that [~~a~~
- 178 ~~person~~] an individual 18 years or over under the continuing jurisdiction of the juvenile court
- 179 pursuant to Section 78A-6-120 shall be referred to as a minor.
- 180 (5) "Board" means the Board of Juvenile Court Judges.
- 181 (6) "Child" means [~~a person~~] an individual under 18 years of age.
- 182 (7) "Child placement agency" means:

183 (a) a private agency licensed to receive a child for placement or adoption under this
184 code; or

185 (b) a private agency that receives a child for placement or adoption in another state,
186 which agency is licensed or approved where such license or approval is required by law.

187 (8) "Clandestine laboratory operation" means the same as that term is defined in
188 Section [58-37d-3](#).

189 (9) "Commit" means, unless specified otherwise:

190 (a) with respect to a child, to transfer legal custody; and

191 (b) with respect to a minor who is at least 18 years of age, to transfer custody.

192 (10) "Court" means the juvenile court.

193 (11) "Criminogenic risk factors" means evidence-based factors that are associated with
194 a minor's likelihood of reoffending.

195 (12) "Delinquent act" means an act that would constitute a felony or misdemeanor if
196 committed by an adult.

197 (13) "Dependent child" includes a child who is homeless or without proper care
198 through no fault of the child's parent, guardian, or custodian.

199 (14) "Deprivation of custody" means transfer of legal custody by the court from a
200 parent or the parents or a previous legal custodian to another person, agency, or institution.

201 (15) "Detention" means home detention and secure detention as defined in Section
202 [62A-7-101](#) for the temporary care of a minor who requires secure custody in a physically
203 restricting facility:

204 (a) pending court disposition or transfer to another jurisdiction; or

205 (b) while under the continuing jurisdiction of the court.

206 (16) "Detention risk assessment tool" means an evidence-based tool established under
207 Section [78A-6-124](#), on and after July 1, 2018, that assesses a minor's risk of failing to appear in
208 court or reoffending pre-adjudication and designed to assist in making detention
209 determinations.

210 (17) "Division" means the Division of Child and Family Services.

211 (18) "Evidence-based" means a program or practice that has had multiple randomized
212 control studies or a meta-analysis demonstrating that the program or practice is effective for a
213 specific population or has been rated as effective by a standardized program evaluation tool.

214 (19) "Formal probation" means a minor is under field supervision by the probation
215 department or other agency designated by the court and subject to return to the court in
216 accordance with Section 78A-6-123 on and after July 1, 2018.

217 (20) "Formal referral" means a written report from a peace officer or other person
218 informing the court that a minor is or appears to be within the court's jurisdiction and that a
219 case must be reviewed.

220 (21) "Group rehabilitation therapy" means psychological and social counseling of one
221 or more [~~persons~~] individuals in the group, depending upon the recommendation of the
222 therapist.

223 (22) "Guardianship of the person" includes the authority to consent to:

224 (a) marriage;

225 (b) enlistment in the armed forces;

226 (c) major medical, surgical, or psychiatric treatment; or

227 (d) legal custody, if legal custody is not vested in another [~~person~~] individual, agency,
228 or institution.

229 (23) "Habitual truant" means the same as that term is defined in Section 53A-11-101.

230 (24) "Harm" means:

231 (a) physical or developmental injury or damage;

232 (b) emotional damage that results in a serious impairment in the child's growth,
233 development, behavior, or psychological functioning;

234 (c) sexual abuse; or

235 (d) sexual exploitation.

236 (25) (a) "Incest" means engaging in sexual intercourse with [~~a person~~] an individual
237 whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle,
238 aunt, nephew, niece, or first cousin.

239 (b) The relationships described in Subsection (25)(a) include:

240 (i) blood relationships of the whole or half blood, without regard to legitimacy;

241 (ii) relationships of parent and child by adoption; and

242 (iii) relationships of stepparent and stepchild while the marriage creating the
243 relationship of a stepparent and stepchild exists.

244 (26) "Intake probation" means a period of court monitoring that does not include field

245 supervision, but is overseen by a juvenile probation officer, during which a minor is subject to
246 return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

247 (27) "Intellectual disability" means:

248 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or
249 below on an individually administered IQ test, for infants, a clinical judgment of significantly
250 subaverage intellectual functioning;

251 (b) concurrent deficits or impairments in present adaptive functioning, regarding the
252 [person's] individual's effectiveness in meeting the standards expected for the [person's]
253 individual's age by the [person's] individual's cultural group, in at least two of the following
254 areas: communication, self-care, home living, social/interpersonal skills, use of community
255 resources, self-direction, functional academic skills, work, leisure, health, and safety; and

256 (c) the onset is before the [person] individual reaches the age of 18 years.

257 (28) "Legal custody" means a relationship embodying the following rights and duties:

258 (a) the right to physical custody of the minor;

259 (b) the right and duty to protect, train, and discipline the minor;

260 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
261 medical care;

262 (d) the right to determine where and with whom the minor shall live; and

263 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

264 (29) "Material loss" means an uninsured:

265 (a) property loss;

266 (b) out-of-pocket monetary loss;

267 (c) lost wages; or

268 (d) medical expenses.

269 (30) "Mental disorder" means a serious emotional and mental disturbance that severely
270 limits a minor's development and welfare over a significant period of time.

271 (31) "Minor" means:

272 (a) a child; or

273 (b) [a person] an individual who is:

274 (i) at least 18 years of age and younger than 21 years of age; and

275 (ii) under the jurisdiction of the juvenile court.

276 (32) "Mobile crisis outreach team" means a crisis intervention service for minors or
277 families of minors experiencing behavioral health or psychiatric emergencies.

278 (33) "Molestation" means that [~~a person~~] an individual, with the intent to arouse or
279 gratify the sexual desire of any [~~person~~] individual:

280 (a) touches the anus or any part of the genitals of a child;

281 (b) takes indecent liberties with a child; or

282 (c) causes a child to take indecent liberties with the perpetrator or another.

283 (34) "Natural parent" means a minor's biological or adoptive parent, and includes the
284 minor's noncustodial parent.

285 (35) (a) "Neglect" means action or inaction causing:

286 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
287 Relinquishment of a Newborn Child;

288 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
289 guardian, or custodian;

290 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
291 subsistence, education, or medical care, or any other care necessary for the child's health,
292 safety, morals, or well-being;

293 (iv) a child to be at risk of being neglected or abused because another child in the same
294 home is neglected or abused; or

295 (v) abandonment of a child through an unregulated custody transfer.

296 (b) The aspect of neglect relating to education, described in Subsection (35)(a)(iii),
297 means that, after receiving a notice of compulsory education violation under Section
298 [53A-11-101.5](#), the parent or guardian fails to make a good faith effort to ensure that the child
299 receives an appropriate education.

300 [~~(c) A parent or guardian legitimately practicing religious beliefs and who, for that
301 reason, does not provide specified medical treatment for a child, is not guilty of neglect.]~~

302 [~~(d) (i) Notwithstanding Subsection (35)(a), a health care decision made for a child by
303 the child's parent or guardian does not constitute neglect unless the state or other party to the
304 proceeding shows, by clear and convincing evidence, that the health care decision is not
305 reasonable and informed.]~~

306 [~~(ii) Nothing in Subsection (35)(d)(i) may prohibit a parent or guardian from exercising~~

307 ~~the right to obtain a second health care opinion and from pursuing care and treatment pursuant~~
308 ~~to the second health care opinion, as described in Section [78A-6-301.5](#).]~~

309 (c) "Neglect" does not include:

310 (i) a parent or guardian legitimately practicing religious beliefs and who, for that
311 reason, does not provide specified medical treatment for a child;

312 (ii) a health care decision made for a child by the child's parent or guardian, unless the
313 state or other party to a proceeding shows, by clear and convincing evidence, that the health
314 care decision is not reasonable and informed;

315 (iii) a parent or guardian exercising the right described in Section [78A-6-301.5](#); or

316 (iv) permitting a child, whose basic needs are met and who is of sufficient age and
317 maturity to avoid harm or unreasonable risk of harm, to engage in independent activities,
318 including:

319 (A) traveling to and from school, including by walking, running, or bicycling;

320 (B) traveling to and from nearby commercial or recreational facilities;

321 (C) engaging in outdoor play;

322 (D) remaining in a vehicle unattended, except under the conditions described in

323 Subsection [76-10-2202\(2\)](#);

324 (E) remaining at home unattended; or

325 (F) engaging in a similar independent activity.

326 (36) "Neglected child" means a child who has been subjected to neglect.

327 (37) "Nonjudicial adjustment" means closure of the case by the assigned probation
328 officer without judicial determination upon the consent in writing of:

329 (a) the assigned probation officer; and

330 (b) (i) the minor; or

331 (ii) the minor and the minor's parent, legal guardian, or custodian.

332 (38) "Not competent to proceed" means that a minor, due to a mental disorder,
333 intellectual disability, or related condition as defined, lacks the ability to:

334 (a) understand the nature of the proceedings against them or of the potential disposition
335 for the offense charged; or

336 (b) consult with counsel and participate in the proceedings against them with a
337 reasonable degree of rational understanding.

338 (39) "Physical abuse" means abuse that results in physical injury or damage to a child.

339 (40) "Probation" means a legal status created by court order following an adjudication
340 on the ground of a violation of law or under Section 78A-6-103, whereby the minor is
341 permitted to remain in the minor's home under prescribed conditions.

342 (41) "Protective supervision" means a legal status created by court order following an
343 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
344 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
345 dependency is provided by the probation department or other agency designated by the court.

346 (42) "Related condition" means a condition closely related to intellectual disability in
347 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah
348 Administrative Code.

349 (43) (a) "Residual parental rights and duties" means those rights and duties remaining
350 with the parent after legal custody or guardianship, or both, have been vested in another person
351 or agency, including:

- 352 (i) the responsibility for support;
- 353 (ii) the right to consent to adoption;
- 354 (iii) the right to determine the child's religious affiliation; and
- 355 (iv) the right to reasonable parent-time unless restricted by the court.

356 (b) If no guardian has been appointed, "residual parental rights and duties" also include
357 the right to consent to:

- 358 (i) marriage;
- 359 (ii) enlistment; and
- 360 (iii) major medical, surgical, or psychiatric treatment.

361 (44) "Secure facility" means any facility operated by or under contract with the
362 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
363 youth offenders committed to the division for custody and rehabilitation pursuant to Subsection
364 78A-6-117(2)(d).

365 (45) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
366 child.

367 (46) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
368 child.

- 369 (47) "Sexual abuse" means:
- 370 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
371 adult directed towards a child;
- 372 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
373 committed by a child towards another child if:
- 374 (i) there is an indication of force or coercion;
- 375 (ii) the children are related, as described in Subsection (25);
- 376 (iii) there have been repeated incidents of sexual contact between the two children,
377 unless the children are 14 years of age or older; or
- 378 (iv) there is a disparity in chronological age of four or more years between the two
379 children; or
- 380 (c) engaging in any conduct with a child that would constitute an offense under any of
381 the following, regardless of whether the person who engages in the conduct is actually charged
382 with, or convicted of, the offense:
- 383 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
384 alleged perpetrator of an offense described in Section 76-5-401 is a minor;
- 385 (ii) child bigamy, Section 76-7-101.5;
- 386 (iii) incest, Section 76-7-102;
- 387 (iv) lewdness, Section 76-9-702;
- 388 (v) sexual battery, Section 76-9-702.1;
- 389 (vi) lewdness involving a child, Section 76-9-702.5; or
- 390 (vii) voyeurism, Section 76-9-702.7.
- 391 (48) "Sexual exploitation" means knowingly:
- 392 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 393 (i) pose in the nude for the purpose of sexual arousal of any person; or
- 394 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
395 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
- 396 (b) displaying, distributing, possessing for the purpose of distribution, or selling
397 material depicting a child:
- 398 (i) in the nude, for the purpose of sexual arousal of any person; or
- 399 (ii) engaging in sexual or simulated sexual conduct; or

400 (c) engaging in any conduct that would constitute an offense under Section [76-5b-201](#),
401 sexual exploitation of a minor, regardless of whether the person who engages in the conduct is
402 actually charged with, or convicted of, the offense.

403 (49) "Shelter" means the temporary care of a child in a physically unrestricted facility
404 pending court disposition or transfer to another jurisdiction.

405 (50) "Status offense" means a violation of the law that would not be a violation but for
406 the age of the offender.

407 (51) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
408 substances.

409 (52) "Substantiated" means the same as that term is defined in Section [62A-4a-101](#).

410 (53) "Supported" means the same as that term is defined in Section [62A-4a-101](#).

411 (54) "Termination of parental rights" means the permanent elimination of all parental
412 rights and duties, including residual parental rights and duties, by court order.

413 (55) "Therapist" means:

414 (a) a person employed by a state division or agency for the purpose of conducting
415 psychological treatment and counseling of a minor in its custody; or

416 (b) any other person licensed or approved by the state for the purpose of conducting
417 psychological treatment and counseling.

418 (56) "Unregulated custody transfer" means the placement of a child:

419 (a) with a person who is not the child's parent, step-parent, grandparent, adult sibling,
420 adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with whom
421 the child is familiar, or a member of the child's federally recognized tribe;

422 (b) with the intent of severing the child's existing parent-child or guardian-child
423 relationship; and

424 (c) without taking:

425 (i) reasonable steps to ensure the safety of the child and permanency of the placement;
426 and

427 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or
428 guardianship to the person taking custody of the child.

429 (57) "Unsubstantiated" means the same as that term is defined in Section [62A-4a-101](#).

430 (58) "Validated risk and needs assessment" means an evidence-based tool that assesses

431 a minor's risk of reoffending and a minor's criminogenic needs.

432 (59) "Without merit" means the same as that term is defined in Section 62A-4a-101.

433 Section 4. Section 78A-6-302 is amended to read:

434 **78A-6-302. Court-ordered protective custody of a child following petition filing --**

435 **Grounds.**

436 (1) After a petition has been filed under Section 78A-6-304, if the child who is the
437 subject of the petition is not in the protective custody of the division, a court may order that the
438 child be removed from the child's home or otherwise taken into protective custody if the court
439 finds, by a preponderance of the evidence, that any one or more of the following circumstances
440 exist:

441 (a) (i) there is an imminent danger to the physical health or safety of the child; and

442 (ii) the child's physical health or safety may not be protected without removing the
443 child from the custody of the child's parent or guardian;

444 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct
445 that causes the child to suffer harm; and

446 (ii) there are no less restrictive means available by which the child's emotional health
447 may be protected without removing the child from the custody of the child's parent or guardian;

448 (c) the child or another child residing in the same household has been, or is considered
449 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a
450 parent or guardian, a member of the parent's or guardian's household, or other person known to
451 the parent or guardian;

452 (d) the parent or guardian is unwilling to have physical custody of the child;

453 (e) the child is abandoned or left without any provision for the child's support;

454 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
455 or cannot arrange for safe and appropriate care for the child;

456 (g) (i) a relative or other adult custodian with whom the child is left by the parent or
457 guardian is unwilling or unable to provide care or support for the child;

458 (ii) the whereabouts of the parent or guardian are unknown; and

459 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;

460 (h) subject to Subsections 78A-6-105(35)~~(c)~~(c)(i) through (iii) and 78A-6-117(2) and
461 Section 78A-6-301.5, the child is in immediate need of medical care;

462 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
463 environment that poses a serious risk to the child's health or safety for which immediate
464 remedial or preventive action is necessary; or

465 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose
466 a threat to the child's health or safety;

467 (j) the child or another child residing in the same household has been neglected;

468 (k) the child's natural parent:

469 (i) intentionally, knowingly, or recklessly causes the death of another parent of the
470 child;

471 (ii) is identified by a law enforcement agency as the primary suspect in an investigation
472 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

473 (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or
474 recklessly causing the death of another parent of the child;

475 (l) an infant has been abandoned, as defined in Section [78A-6-316](#);

476 (m) (i) the parent or guardian, or an adult residing in the same household as the parent
477 or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab
478 Act; and

479 (ii) any clandestine laboratory operation was located in the residence or on the property
480 where the child resided; or

481 (n) the child's welfare is otherwise endangered.

482 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as
483 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
484 occurs involving the same substantiated abuser or under similar circumstance as the previous
485 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the
486 custody of the child's parent.

487 (b) For purposes of Subsection (1)(c):

488 (i) another child residing in the same household may not be removed from the home
489 unless that child is considered to be at substantial risk of being physically abused, sexually
490 abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

491 (ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse,
492 or sexual exploitation by a person known to the parent has occurred, and there is evidence that

493 the parent or guardian failed to protect the child, after having received the notice, by allowing
494 the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie
495 evidence that the child is at substantial risk of being physically abused, sexually abused, or
496 sexually exploited.

497 (3) (a) For purposes of Subsection (1), if the division files a petition under Section
498 78A-6-304, the court shall consider the division's safety and risk assessments described in
499 Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the
500 child's parent or guardian or should otherwise be taken into protective custody.

501 (b) The division shall make a diligent effort to provide the safety and risk assessments
502 described in Section 62A-4a-203.1 to the court, guardian ad litem, and counsel for the parent or
503 guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.

504 (4) In the absence of one of the factors described in Subsection (1), a court may not
505 remove a child from the parent's or guardian's custody on the basis of:

506 (a) educational neglect, truancy, or failure to comply with a court order to attend
507 school;

508 (b) mental illness or poverty of the parent or guardian; or

509 (c) disability of the parent or guardian, as defined in Section 57-21-2.

510 (5) A child removed from the custody of the child's parent or guardian under this
511 section may not be placed or kept in a secure detention facility pending further court
512 proceedings unless the child is detainable based on guidelines promulgated by the Division of
513 Juvenile Justice Services.

514 (6) This section does not preclude removal of a child from the child's home without a
515 warrant or court order under Section 62A-4a-202.1.

516 (7) (a) Except as provided in Subsection (7)(b), a court or the Division of Child and
517 Family Services may not remove a child from the custody of the child's parent or guardian on
518 the sole or primary basis that the parent or guardian refuses to consent to:

519 (i) the administration of a psychotropic medication to a child;

520 (ii) a psychiatric, psychological, or behavioral treatment for a child; or

521 (iii) a psychiatric or behavioral health evaluation of a child.

522 (b) Notwithstanding Subsection (7)(a), a court or the Division of Child and Family
523 Services may remove a child under conditions that would otherwise be prohibited under

524 Subsection (7)(a) if failure to take an action described under Subsection (7)(a) would present a
525 serious, imminent risk to the child's physical safety or the physical safety of others.

526 Section 5. Section **78A-6-306** is amended to read:

527 **78A-6-306. Shelter hearing.**

528 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
529 after any one or all of the following occur:

530 (a) removal of the child from the child's home by the division;

531 (b) placement of the child in the protective custody of the division;

532 (c) emergency placement under Subsection [62A-4a-202.1\(4\)](#);

533 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
534 at the request of the division; or

535 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
536 Subsection [78A-6-106\(4\)](#).

537 (2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the
538 division shall issue a notice that contains all of the following:

539 (a) the name and address of the person to whom the notice is directed;

540 (b) the date, time, and place of the shelter hearing;

541 (c) the name of the child on whose behalf a petition is being brought;

542 (d) a concise statement regarding:

543 (i) the reasons for removal or other action of the division under Subsection (1); and

544 (ii) the allegations and code sections under which the proceeding has been instituted;

545 (e) a statement that the parent or guardian to whom notice is given, and the child, are
546 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
547 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
548 provided in accordance with the provisions of Section [78A-6-1111](#); and

549 (f) a statement that the parent or guardian is liable for the cost of support of the child in
550 the protective custody, temporary custody, and custody of the division, and the cost for legal
551 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
552 ability of the parent or guardian.

553 (3) The notice described in Subsection (2) shall be personally served as soon as
554 possible, but no later than one business day after removal of the child from the child's home, or

555 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
556 78A-6-106(4), on:

557 (a) the appropriate guardian ad litem; and

558 (b) both parents and any guardian of the child, unless the parents or guardians cannot
559 be located.

560 (4) The following persons shall be present at the shelter hearing:

561 (a) the child, unless it would be detrimental for the child;

562 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
563 fail to appear in response to the notice;

564 (c) counsel for the parents, if one is requested;

565 (d) the child's guardian ad litem;

566 (e) the caseworker from the division who is assigned to the case; and

567 (f) the attorney from the attorney general's office who is representing the division.

568 (5) (a) At the shelter hearing, the court shall:

569 (i) provide an opportunity to provide relevant testimony to:

570 (A) the child's parent or guardian, if present; and

571 (B) any other person having relevant knowledge; and

572 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

573 (b) The court:

574 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
575 Procedure;

576 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
577 the requesting party, or their counsel; and

578 (iii) may in its discretion limit testimony and evidence to only that which goes to the
579 issues of removal and the child's need for continued protection.

580 (6) If the child is in the protective custody of the division, the division shall report to
581 the court:

582 (a) the reason why the child was removed from the parent's or guardian's custody;

583 (b) any services provided to the child and the child's family in an effort to prevent
584 removal;

585 (c) the need, if any, for continued shelter;

586 (d) the available services that could facilitate the return of the child to the custody of
587 the child's parent or guardian; and

588 (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the
589 child or friends of the child's parents may be able and willing to accept temporary placement of
590 the child.

591 (7) The court shall consider all relevant evidence provided by persons or entities
592 authorized to present relevant evidence pursuant to this section.

593 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
594 cause shown, the court may grant no more than one continuance, not to exceed five judicial
595 days.

596 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
597 a continuance under Subsection (8)(a).

598 (c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice
599 described in Subsection (2) within the time described in Subsection (3), the court may grant the
600 request of a parent or guardian for a continuance, not to exceed five judicial days.

601 (9) (a) If the child is in the protective custody of the division, the court shall order that
602 the child be returned to the custody of the parent or guardian unless it finds, by a
603 preponderance of the evidence, consistent with the protections and requirements provided in
604 Subsection 62A-4a-201(1), that any one of the following exists:

605 (i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or
606 safety of the child and the child's physical health or safety may not be protected without
607 removing the child from the custody of the child's parent;

608 (ii) (A) the child is suffering emotional damage that results in a serious impairment in
609 the child's growth, development, behavior, or psychological functioning;

610 (B) the parent or guardian is unwilling or unable to make reasonable changes that
611 would sufficiently prevent future damage; and

612 (C) there are no reasonable means available by which the child's emotional health may
613 be protected without removing the child from the custody of the child's parent or guardian;

614 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
615 not removed from the custody of the child's parent or guardian;

616 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same

617 household has been, or is considered to be at substantial risk of being, physically abused,
618 sexually abused, or sexually exploited by a:

- 619 (A) parent or guardian;
- 620 (B) member of the parent's household or the guardian's household; or
- 621 (C) person known to the parent or guardian;
- 622 (v) the parent or guardian is unwilling to have physical custody of the child;
- 623 (vi) the child is without any provision for the child's support;
- 624 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe
625 and appropriate care for the child;
- 626 (viii) (A) a relative or other adult custodian with whom the child is left by the parent or
627 guardian is unwilling or unable to provide care or support for the child;
- 628 (B) the whereabouts of the parent or guardian are unknown; and
- 629 (C) reasonable efforts to locate the parent or guardian are unsuccessful;
- 630 (ix) subject to Subsections [78A-6-105\(35\)\(f\)\(d\)\(c\)\(i\) through \(iii\)](#) and [78A-6-117\(2\)](#)
631 and Section [78A-6-301.5](#), the child is in immediate need of medical care;
- 632 (x) (A) the physical environment or the fact that the child is left unattended beyond a
633 reasonable period of time poses a threat to the child's health or safety; and
- 634 (B) the parent or guardian is unwilling or unable to make reasonable changes that
635 would remove the threat;
- 636 (xi) (A) the child or a minor residing in the same household has been neglected; and
- 637 (B) the parent or guardian is unwilling or unable to make reasonable changes that
638 would prevent the neglect;
- 639 (xii) the parent, guardian, or an adult residing in the same household as the parent or
640 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act,
641 and any clandestine laboratory operation was located in the residence or on the property where
642 the child resided;
- 643 (xiii) (A) the child's welfare is substantially endangered; and
- 644 (B) the parent or guardian is unwilling or unable to make reasonable changes that
645 would remove the danger; or
- 646 (xiv) the child's natural parent:
- 647 (A) intentionally, knowingly, or recklessly causes the death of another parent of the

648 child;

649 (B) is identified by a law enforcement agency as the primary suspect in an investigation
650 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

651 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
652 recklessly causing the death of another parent of the child.

653 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is
654 established if:

655 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency
656 involving the parent; and

657 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

658 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly
659 allowed the child to be in the physical care of a person after the parent received actual notice
660 that the person physically abused, sexually abused, or sexually exploited the child, that fact
661 constitutes prima facie evidence that there is a substantial risk that the child will be physically
662 abused, sexually abused, or sexually exploited.

663 (10) (a) (i) The court shall also make a determination on the record as to whether
664 reasonable efforts were made to prevent or eliminate the need for removal of the child from the
665 child's home and whether there are available services that would prevent the need for continued
666 removal.

667 (ii) If the court finds that the child can be safely returned to the custody of the child's
668 parent or guardian through the provision of those services, the court shall place the child with
669 the child's parent or guardian and order that those services be provided by the division.

670 (b) In making the determination described in Subsection (10)(a), and in ordering and
671 providing services, the child's health, safety, and welfare shall be the paramount concern, in
672 accordance with federal law.

673 (11) Where the division's first contact with the family occurred during an emergency
674 situation in which the child could not safely remain at home, the court shall make a finding that
675 any lack of preplacement preventive efforts was appropriate.

676 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
677 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
678 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,

679 return a child to the child's home, provide reunification services, or attempt to rehabilitate the
680 offending parent or parents.

681 (13) The court may not order continued removal of a child solely on the basis of
682 educational neglect as described in Subsection 78A-6-105(35)(b), truancy, or failure to comply
683 with a court order to attend school.

684 (14) (a) Whenever a court orders continued removal of a child under this section, the
685 court shall state the facts on which that decision is based.

686 (b) If no continued removal is ordered and the child is returned home, the court shall
687 state the facts on which that decision is based.

688 (15) If the court finds that continued removal and temporary custody are necessary for
689 the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal
690 regardless of:

691 (a) any error in the initial removal of the child;

692 (b) the failure of a party to comply with notice provisions; or

693 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
694 and Family Services.

695 Section 6. Section 78A-6-312 is amended to read:

696 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

697 (1) The court may:

698 (a) make any of the dispositions described in Section 78A-6-117;

699 (b) place the minor in the custody or guardianship of any:

700 (i) individual; or

701 (ii) public or private entity or agency; or

702 (c) order:

703 (i) protective supervision;

704 (ii) family preservation;

705 (iii) subject to Subsections (12)(b), 78A-6-105(35)~~(c)~~(c)(i) through (iii), and

706 78A-6-117(2) and Section 78A-6-301.5, medical or mental health treatment;

707 (iv) sibling visitation; or

708 (v) other services.

709 (2) Whenever the court orders continued removal at the dispositional hearing, and that

710 the minor remain in the custody of the division, the court shall first:

711 (a) establish a primary permanency plan for the minor; and

712 (b) determine whether, in view of the primary permanency plan, reunification services
713 are appropriate for the minor and the minor's family, pursuant to Subsections (21) through (23).

714 (3) Subject to Subsections (6) and (7), if the court determines that reunification
715 services are appropriate for the minor and the minor's family, the court shall provide for
716 reasonable parent-time with the parent or parents from whose custody the minor was removed,
717 unless parent-time is not in the best interest of the minor.

718 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe
719 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
720 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
721 attempt to rehabilitate the offending parent or parents.

722 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount
723 concern in determining whether reasonable efforts to reunify should be made.

724 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless
725 the court makes a finding that it is necessary to deny parent-time in order to:

726 (a) protect the physical safety of the minor;

727 (b) protect the life of the minor; or

728 (c) prevent the minor from being traumatized by contact with the parent due to the
729 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

730 (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a
731 parent's failure to:

732 (a) prove that the parent has not used legal or illegal substances; or

733 (b) comply with an aspect of the child and family plan that is ordered by the court.

734 (8) (a) In addition to the primary permanency plan, the court shall establish a
735 concurrent permanency plan that shall include:

736 (i) a representative list of the conditions under which the primary permanency plan will
737 be abandoned in favor of the concurrent permanency plan; and

738 (ii) an explanation of the effect of abandoning or modifying the primary permanency
739 plan.

740 (b) In determining the primary permanency plan and concurrent permanency plan, the

741 court shall consider:

742 (i) the preference for kinship placement over nonkinship placement;
743 (ii) the potential for a guardianship placement if the parent-child relationship is legally
744 terminated and no appropriate adoption placement is available; and

745 (iii) the use of an individualized permanency plan, only as a last resort.

746 (9) A permanency hearing shall be conducted in accordance with Subsection
747 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
748 something other than reunification is initially established as a minor's primary permanency
749 plan.

750 (10) (a) The court may amend a minor's primary permanency plan before the
751 establishment of a final permanency plan under Section 78A-6-314.

752 (b) The court is not limited to the terms of the concurrent permanency plan in the event
753 that the primary permanency plan is abandoned.

754 (c) If, at any time, the court determines that reunification is no longer a minor's primary
755 permanency plan, the court shall conduct a permanency hearing in accordance with Section
756 78A-6-314 on or before the earlier of:

757 (i) 30 days after the day on which the court makes the determination described in this
758 Subsection (10)(c); or

759 (ii) the day on which the provision of reunification services, described in Section
760 78A-6-314, ends.

761 (11) (a) If the court determines that reunification services are appropriate, the court
762 shall order that the division make reasonable efforts to provide services to the minor and the
763 minor's parent for the purpose of facilitating reunification of the family, for a specified period
764 of time.

765 (b) In providing the services described in Subsection (11)(a), the minor's health, safety,
766 and welfare shall be the division's paramount concern, and the court shall so order.

767 (12) (a) The court shall:

768 (i) determine whether the services offered or provided by the division under the child
769 and family plan constitute "reasonable efforts" on the part of the division;

770 (ii) determine and define the responsibilities of the parent under the child and family
771 plan in accordance with Subsection 62A-4a-205(6)(e); and

772 (iii) identify verbally on the record, or in a written document provided to the parties,
773 the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future
774 determination regarding the provision of reasonable efforts, in accordance with state and
775 federal law.

776 (b) If the parent is in a substance use disorder treatment program, other than a certified
777 drug court program:

778 (i) the court may order the parent to submit to supplementary drug or alcohol testing in
779 addition to the testing recommended by the parent's substance use disorder program based on a
780 finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

781 (ii) the court may order the parent to provide the results of drug or alcohol testing
782 recommended by the substance use disorder program to the court or division.

783 (13) (a) The time period for reunification services may not exceed 12 months from the
784 date that the minor was initially removed from the minor's home, unless the time period is
785 extended under Subsection [78A-6-314\(7\)](#).

786 (b) Nothing in this section may be construed to entitle any parent to an entire 12
787 months of reunification services.

788 (14) (a) If reunification services are ordered, the court may terminate those services at
789 any time.

790 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
791 to be inconsistent with the final permanency plan for the minor established pursuant to Section
792 [78A-6-314](#), then measures shall be taken, in a timely manner, to:

793 (i) place the minor in accordance with the permanency plan; and

794 (ii) complete whatever steps are necessary to finalize the permanent placement of the
795 minor.

796 (15) Any physical custody of the minor by the parent or a relative during the period
797 described in Subsections (11) through (14) does not interrupt the running of the period.

798 (16) (a) If reunification services are ordered, a permanency hearing shall be conducted
799 by the court in accordance with Section [78A-6-314](#) at the expiration of the time period for
800 reunification services.

801 (b) The permanency hearing shall be held no later than 12 months after the original
802 removal of the minor.

803 (c) If reunification services are not ordered, a permanency hearing shall be conducted
804 within 30 days, in accordance with Section 78A-6-314.

805 (17) With regard to a minor in the custody of the division whose parent or parents are
806 ordered to receive reunification services but who have abandoned that minor for a period of six
807 months from the date that reunification services were ordered:

808 (a) the court shall terminate reunification services; and

809 (b) the division shall petition the court for termination of parental rights.

810 (18) When a court conducts a permanency hearing for a minor under Section
811 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
812 sibling group together is:

813 (a) practicable; and

814 (b) in accordance with the best interest of the minor.

815 (19) When a child is under the custody of the division and has been separated from a
816 sibling due to foster care or adoptive placement, a court may order sibling visitation, subject to
817 the division obtaining consent from the sibling's legal guardian, according to the court's
818 determination of the best interests of the child for whom the hearing is held.

819 (20) (a) Because of the state's interest in and responsibility to protect and provide
820 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
821 parent's interest in receiving reunification services is limited.

822 (b) The court may determine that:

823 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
824 based on the individual circumstances; and

825 (ii) reunification services should not be provided.

826 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
827 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
828 concern.

829 (21) There is a presumption that reunification services should not be provided to a
830 parent if the court finds, by clear and convincing evidence, that any of the following
831 circumstances exist:

832 (a) the whereabouts of the parents are unknown, based upon a verified affidavit
833 indicating that a reasonably diligent search has failed to locate the parent;

834 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such
835 magnitude that it renders the parent incapable of utilizing reunification services;

836 (c) the minor was previously adjudicated as an abused child due to physical abuse,
837 sexual abuse, or sexual exploitation, and following the adjudication the minor:

838 (i) was removed from the custody of the minor's parent;

839 (ii) was subsequently returned to the custody of the parent; and

840 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
841 exploitation;

842 (d) the parent:

843 (i) caused the death of another minor through abuse or neglect;

844 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

845 (A) murder or manslaughter of a child; or

846 (B) child abuse homicide;

847 (iii) committed sexual abuse against the child;

848 (iv) is a registered sex offender or required to register as a sex offender; or

849 (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the
850 child;

851 (B) is identified by a law enforcement agency as the primary suspect in an investigation
852 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

853 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
854 recklessly causing the death of another parent of the child;

855 (e) the minor suffered severe abuse by the parent or by any person known by the
856 parent, if the parent knew or reasonably should have known that the person was abusing the
857 minor;

858 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
859 and the court finds that it would not benefit the minor to pursue reunification services with the
860 offending parent;

861 (g) the parent's rights are terminated with regard to any other minor;

862 (h) the minor was removed from the minor's home on at least two previous occasions
863 and reunification services were offered or provided to the family at those times;

864 (i) the parent has abandoned the minor for a period of six months or longer;

865 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
866 location where the parent knew or should have known that a clandestine laboratory operation
867 was located;

868 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's
869 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
870 exposed to an illegal or prescription drug that was abused by the child's mother while the child
871 was in utero, if the child was taken into division custody for that reason, unless the mother
872 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
873 substance use disorder treatment program approved by the department; or

874 (l) any other circumstance that the court determines should preclude reunification
875 efforts or services.

876 (22) (a) The finding under Subsection (21)(b) shall be based on competent evidence
877 from at least two medical or mental health professionals, who are not associates, establishing
878 that, even with the provision of services, the parent is not likely to be capable of adequately
879 caring for the minor within 12 months after the day on which the court finding is made.

880 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under
881 the circumstances of the case, that the substance use disorder treatment described in Subsection
882 (21)(k) is not warranted.

883 (23) In determining whether reunification services are appropriate, the court shall take
884 into consideration:

885 (a) failure of the parent to respond to previous services or comply with a previous child
886 and family plan;

887 (b) the fact that the minor was abused while the parent was under the influence of
888 drugs or alcohol;

889 (c) any history of violent behavior directed at the child or an immediate family
890 member;

891 (d) whether a parent continues to live with an individual who abused the minor;

892 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

893 (f) testimony by a competent professional that the parent's behavior is unlikely to be
894 successful; and

895 (g) whether the parent has expressed an interest in reunification with the minor.

896 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through
897 (22), and the whereabouts of a parent become known within six months after the day on which
898 the out-of-home placement of the minor is made, the court may order the division to provide
899 reunification services.

900 (b) The time limits described in Subsections (2) through (18) are not tolled by the
901 parent's absence.

902 (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
903 services unless the court determines that those services would be detrimental to the minor.

904 (b) In making the determination described in Subsection (25)(a), the court shall
905 consider:

- 906 (i) the age of the minor;
- 907 (ii) the degree of parent-child bonding;
- 908 (iii) the length of the sentence;
- 909 (iv) the nature of the treatment;
- 910 (v) the nature of the crime or illness;
- 911 (vi) the degree of detriment to the minor if services are not offered;
- 912 (vii) for a minor 10 years old or older, the minor's attitude toward the implementation
913 of family reunification services; and
- 914 (viii) any other appropriate factors.

915 (c) Reunification services for an incarcerated parent are subject to the time limitations
916 imposed in Subsections (2) through (18).

917 (d) Reunification services for an institutionalized parent are subject to the time
918 limitations imposed in Subsections (2) through (18), unless the court determines that continued
919 reunification services would be in the minor's best interest.

920 (26) If, pursuant to Subsections (21)(b) through (l), the court does not order
921 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
922 with Section [78A-6-314](#).